

1
2
3
4 UNITED STATES DISTRICT COURT
5 WESTERN DISTRICT OF WASHINGTON
6 AT SEATTLE

7 WILLIAM A. D.,

8 Plaintiff,

9 v.

10 COMMISSIONER OF SOCIAL SECURITY,

11 Defendant.

CASE NO. 3:19-cv-05048-BAT

**ORDER AFFIRMING THE
COMMISSIONER'S FINAL DECISION
AND DISMISSING WITH PREJUDICE**

12 Plaintiff appeals the denial of his application for Supplemental Security Income. He
13 contends the Administrative Law Judge ("ALJ") erred by according the opinions of the testifying
14 medical consultant and examining physicians greater weight than the opinions of his treating
15 optometrist and physician, and erred in her determination of his credibility, all of which resulted
16 in an erroneous residual functional capacity ("RFC") assessment. Dkt. 8, p. 1.

17 The Court **AFFIRMS** the Commissioner's final decision and **DISMISSES** the case with
18 prejudice.

19 **BACKGROUND**

20 Plaintiff filed an application for disability insurance benefits, on August 7, 2014, alleging
21 disability commencing on August 3, 2013. Plaintiff alleges that he has been disabled since a
22 workplace accident in which he slipped, fell, and hit his head and lost consciousness. He alleges
23 that since the accident, he has had persistent double vision (diplopia), migraines and shoulder
pain. Plaintiff's application was denied initially on June 5, 2015 and on reconsideration on

1 October 29, 2015. Tr. 15. ALJ Marilyn S. Mauer presided over a hearing on May 18, 2017, and a
2 supplemental hearing on August 30, 2017. Plaintiff was represented by counsel. A medical
3 consultant and vocational consultant also testified.

4 Utilizing the five-step disability evaluation process (20 C.F.R. §§ 404.1520, 416.920), the
5 ALJ determined at steps one through three, that Plaintiff had not engaged in substantial activity
6 from his alleged onset date of August 3, 2013 through his date of last insured of December 31,
7 2014; Plaintiff has the following severe impairments: subjective diplopia, migraine, adhesive
8 capsulitis in the left shoulder, and organic brain syndrome (20 CFR 404.1520(c)); and these
9 impairments did not meet the Listings (20 C.F.R. Part 404, Subpart P. Appendix 1). Tr. 17, 18.

10 At step four, the ALJ found that through the date last insured, Plaintiff had the RFC to
11 perform light work as defined in 20 CFR 404.1567(b). In addition, Plaintiff can never climb
12 ladders, ropes or scaffolds; can frequently balance, climb ramps and stairs with the aid of a
13 handrail, stoop, crouch, crawl, and kneel; can occasionally reach overhead with the left arm; can
14 work in a setting that does not require exposure to hazards such as unprotected height, large
15 moving equipment, exposure to extreme cold temperatures, and vibration; can understand,
16 remember and apply information, complete tasks with a GED reasoning level of 2 or less in a
17 setting with occasional coworker contact and no public contact; and can perform tasks that do
18 not require excellent depth perception. Tr. 20

19 At step five, the ALJ relied on a vocational expert, who testified Plaintiff could work as a
20 light office helper, router, and electronics worker. The vocational expert also testified that
21 Plaintiff could still perform these jobs if he were limited to frequent fine manipulation with the
22 dominant right hand, and if he were limited to only occasional reading, he could still perform the
23 jobs of electronics worker and office helper. Tr. 28.

1 The ALJ issued her decision denying Plaintiff's application on December 4, 2017. The
2 Appeals Council denied Plaintiff's request for review on November 13, 2018. Thus, the ALJ's
3 decision is the final decision of the Commissioner, and is ripe for judicial review.

4 DISCUSSION

5 The Court will reverse the ALJ's decision only if it was not supported by substantial
6 evidence in the record as a whole or if the ALJ applied the wrong legal standard. *Molina v.*
7 *Astrue*, 674 F.3d 1104, 1110 (9th Cir. 2012). The ALJ's decision may not be reversed on account
8 of an error that is harmless. *Id.* at 1111. Where the evidence is susceptible to more than one
9 rational interpretation, the Court must uphold the Commissioner's interpretation. *Thomas v.*
10 *Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002).

11 A. Evaluation of Medical Evidence

12 1. Curtis Baxstrom, O.D.

13 Plaintiff contends the ALJ erred in weighing the opinion of his optometrist, Curtis
14 Baxstrom, because the ALJ failed to consider Dr. Baxstrom's treating relationship with Plaintiff
15 and his area of specialization, and ignored the hierarchy of medical opinions. *See, e.g.*, 20 C.F.R.
16 § 404.1527; *see also Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1995) (treating physicians, who
17 actually treat the claimant, examining physicians, who examine but do not treat the claimant, and
18 non-examining physicians, who do not treat nor examine the claimant). Dkt. 10, p. 2.

19 The ALJ must "explain in the decision the weight given to the opinions" of all acceptable
20 medical sources. 20 C.F.R. § 404.1527(e)(2)(ii) (2016). For treating source opinions, the ALJ
21 must give "good reasons" for the weight given. Social Security Ruling (SSR) 96-2p, *available at*
22
23

1 1996 WL 374188, at *5.¹ An ALJ may reject a contradicted medical opinion by providing
2 “specific and legitimate” reasons, supported by substantial evidence, for doing so. *Morgan v.*
3 *Comm’r of the Soc. Sec. Admin.*, 169 F.3d 595, 600 (9th Cir. 1999). Thus, the issue is whether
4 Dr. Baxstrom’s medical opinion was contradicted and if so, whether the ALJ gave specific and
5 legitimate reasons, supported by substantial evidence, to discount it.

6 Dr. Baxstrom, who specializes in optometric neurorehabilitation, diagnosed Plaintiff with
7 sensory fusion disruption syndrome. Tr. 1002-1003. Dr. Baxstrom noted “multiple experiences
8 where [Plaintiff] demonstrated frank diplopia on testing. The unsteady to almost eccentric
9 fixation would lead an affect [sic] of ghosting of images which could be described as diplopia.”
10 Tr. 978. In a January 4, 2017 report to the Washington Department of Labor and Industries, Dr.
11 Baxstrom did not identify any specific functional limitations or conclude that Plaintiff could not
12 work. When asked if he agreed with the ability to work assessment (from an independent
13 medical examination), Dr. Baxstrom wrote “unknown—there is concern for his ability to safely
14 work [secondary] to visual” symptoms. Tr. 982.

15 The ALJ concluded that Dr. Baxstrom’s opinion was against the weight of other medical
16 evidence in the record, in which no objective support for Plaintiff’s complaints of visual
17 disturbance were found. Tr. 21-22 (“With the exception of Dr. Curtis R. Baxstrom, O.D., the
18 claimant’s treating physician, who provided a statement in January 2019 that the claimant has
19 unsteady fixation of each eye (27F), doctors have not been able to substantiate the claimant’s
20 alleged diplopia.”) An ALJ may reject medical opinion that is unsupported by the record as a
21 whole. *Batson v. Comm’r of the Soc. Sec. Admin.*, 359 F.3d 1190, 1195 (9th Cir. 2004). Also, an
22

23 ¹ The agency has rescinded this SSR in order to conform with regulatory changes applying to
claims filed after March 27, 2017. 82 Fed. Reg. 15263 (Mar. 27, 2017) (rescinding SSR
“effective for claims filed on or after March 27, 2017”).

1 ALJ may reject an opinion that is more heavily based on a claimant's self-reports than on clinical
2 observations. *Ghanim v. Colvin*, 763 F.3d 1154, 1162 (9th Cir. 2014).

3 The ALJ first noted that Dr. Baxstrom's diagnosis stands in stark contrast to the opinions
4 of several other doctors who were not able to substantiate the alleged diplopia on examination.
5 These doctors included Dr. Steven Hamilton, a neuro-ophthalmologist; Dr. Richard Bensinger;
6 Dr. Leonard Seifter; Dr. Wendt, a neurologist; and Dr. Boone, an ophthalmologist, who all
7 opined that there was a mismatch between subjective and objective findings regarding the
8 Plaintiff's diplopia. Tr. 22.

9 Steven Hamilton, M.D., a neuro-ophthalmologist, noted that although Plaintiff alleged
10 during his examination that he could not move his eyes from their primary position, he was
11 clearly moving them left and right with no difficulty when they talked. Tr. 22, 837. Dr. Hamilton
12 concluded that there was a mismatch between Plaintiff's subjective reports and the objective
13 findings during testing, and he suspected a "functional overlay" to Plaintiff's reports. Tr. 837.
14 Richard Bensinger, M.D., an ophthalmologist, reported that despite Plaintiff's subjective reports
15 of double vision, no doubling of vision could be elicited in any gaze position, Plaintiff's eyes
16 moved well, stereoscopic vision showed very good fusion, and he had corrected 20/20 vision. Tr.
17 222, 671-73. Dr. Bensinger concluded, "[t]here seems to be a very large disconnect between
18 [Plaintiff's] reported functioning and the determinations made on the physical examination of his
19 eye." Tr. 673. Dr. Bensinger also concluded that there were "no objective visual limitations to
20 return to work." Tr. 673.

21 Leonard Seifter, M.D., also examined Plaintiff and agreed with Dr. Hamilton's opinion.
22 Dr. Seifter concluded that Plaintiff exhibited no diplopia in primary gaze, and that no evidence of
23 tropia or phoria could be found on testing. Tr. 22, 687. Dr. Seifter suspected that there was a

1 functional component to Plaintiff's responses "due to the mismatch between subjective and
2 objective findings." Tr. 687. John Wendt, M.D., a neurologist, who reviewed records and
3 examined Plaintiff, came to the same conclusion. Dr. Wendt found that Plaintiff's subjective
4 diplopia "is almost certainly functional and nonorganic" and was not substantiated by the
5 neurological examination. Tr. 22, 664. Benton Boone, M.D., an ophthalmologist, reviewed the
6 records and likewise testified that there was a mismatch between subjective and objective
7 findings regarding Plaintiff's diplopia. He concluded that Plaintiff had no visual limitations since
8 his vision was within normal limits on examination, and multiple providers were unable to
9 produce diplopia during examinations. Tr. 22, 80-82, 1216.

10 Plaintiff also argues that the ALJ erred in not giving more weight to Dr. Baxstrom's
11 opinion because Dr. Boone, the testifying expert, had never treated anyone with Plaintiff's
12 particular syndrome (*i.e.*, fusion disruption syndrome). Dkt. 8, p. 6. In this regard, the ALJ noted
13 the testimony of ophthalmologist Dr. Boone, that fusion disruption syndrome "is not a condition
14 generally recognized by ophthalmologists, but is rather a condition that optometrists have
15 posited." Tr. 23. In addition, the ALJ considered four examining opinions, supported by
16 objective testing, along with the opinion of the testifying ophthalmologist, Dr. Boone, all of
17 whom concluded there was no objective evidence to support diplopia. *See, Thomas v. Barnhart*,
18 278 F.3d 947, 957 (9th Cir. 2002) ("The opinions of non-treating or non-examining physicians
19 may also serve as substantial evidence when the opinions are consistent with independent
20 clinical findings or other evidence in the record."). The ALJ further noted the persistent
21 mischaracterization by Plaintiff's representative of Dr. Boone's testimony about visual fixation
22 testing and the need for Plaintiff to have had further testing in 2014, although she failed to
23 identify what additional testing would have been required. Tr. 24.

1 In summary, the Court finds the ALJ did not err in the weight she assigned to the medical
2 evidence. *See Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999) (even if there is more than
3 one reasonable interpretation of the evidence, the Court will not substitute its judgment for the
4 judgment of the ALJ).

5 **2. Paul B. Nutter, M.D.**

6 Dr. Nutter treated Plaintiff for a closed head injury, post-concussive syndrome,
7 headaches, neck sprain, and left shoulder sprain with residual adhesive capsulitis. Dkt. 10, p. 3
8 (citing Tr. 449, 478, 480, 483, 484, 491, 493, 523)). After performing a neuropsychological
9 consultation in October 2014, Dr. Nutter opined, in part, that Plaintiff “was constantly working
10 to accommodate for his diplopia which puts a persistent burden on his cognitive functioning.” Tr.
11 26 (24F, p. 58). In April 2014, Dr. Nutter opined that Plaintiff was limited in lifting, crawling,
12 going up and down ladders, carrying, being on uneven terrain, and was unable to perform his
13 previous job for at least the next two months, but that Plaintiff was capable of doing light duty
14 jobs. The ALJ gave this opinion partial weight to the extent it was inconsistent with the opinions
15 of Drs. Boone, Wendt, Bensinger, and Seifter, “as it gives disproportionate weight to the
16 claimant’s claims of diplopia, which have largely not been substantiated by objective testing and
17 medical opinions.” Tr. 26. The Court finds this was not error for the same reasons the ALJ did
18 not err in discounting Dr. Baxstrom’s opinion.

19 Plaintiff however, contends the ALJ failed to consider other limitations assessed by Dr.
20 Nutter, *i.e.*, that Plaintiff would be “limited to carrying up to 25 pounds and only on level
21 surfaces. ... He has crawling limited to a rare level. He is not allowed to go up and down stairs at
22 this point.” Dkt. 10, p. 3 (citing Tr. 481). Plaintiff argues that because the ALJ failed to present
23 these limitations to the vocational expert, the RFC is in error. The Court disagrees.

1 The limitations to which Plaintiff refers are contained in Dr. Nutter's evaluation of April
2 24, 2014. At that time, Dr. Nutter noted Plaintiff was limited in driving, carrying up to 25 pounds
3 on level surfaces, not going on ladders, crawling limited to a rare level, and in not going up and
4 down stairs "at this point." Tr. 481. In a letter dated April 21, 2014, Dr. Nutter stated that these
5 "deficits are temporary and will last for a minimum of 60 days." Tr. 476.

6 The ALJ's RFC assessment limited Plaintiff to light work as defined in 20 CFR
7 404.1567(b) (lifting no more than 20 pounds); along with the additional limitations of never
8 climbing ladders, ropes, or scaffolds, and climbing ramps and stairs with the aid of a handrail.
9 Tr. 20. Thus, even if the ALJ erred in failing to specifically present Dr. Nutter's temporary
10 limitations to the vocational expert, the error was harmless as the limitations are fairly included
11 in the RFC.

12 **B. Evaluation of Plaintiff's Subjective Complaints**

13 The ALJ found Plaintiff's allegations of disabling symptoms to be inconsistent with the
14 medical and other evidence in the record. Tr. 21. The ALJ is responsible for weighing a
15 claimant's allegations and resolving ambiguities in the evidence. *Edlund v. Massanari*, 253 F.3d
16 1152, 1156 (9th Cir. 2001). When assessing a claimant's allegations, the Commissioner will
17 consider all of the available evidence and will apply several factors in determining the extent to
18 which a claimant's alleged limitations can reasonably be accepted as consistent with the medical
19 evidence and other evidence. 20 C.F.R. § 404.1529(c). "In considering the intensity, persistence,
20 and limiting effects of an individual's symptoms, we examine the entire case record, including
21 the objective medical evidence; an individual's statements about the intensity, persistence, and
22 limiting effects of symptoms; statements and other information provided by medical sources and
23 other persons; and any other relevant evidence in the individual's case record." SSR 16-3p,

1 available at 2017 WL 5180304 (as amended). The Ninth Circuit also holds that clear and
2 convincing reasons are required to reject a claimant's testimony. *Garrison v. Colvin*, 759 F.3d
3 995, 1015 n. 18 (9th Cir. 2014).

4 Plaintiff alleges that following his workplace accident, he has had persistent double
5 vision (diplopia), migraines, and shoulder pain. Tr. 21. Plaintiff alleges that he has double vision,
6 has trouble focusing his eyes, and objects appear as though they are floating. He alleges that
7 because of his vision problems, he bumps into people and objects, and has difficulty with
8 balance and depth perception. Plaintiff claims he suffers from headaches 2-3 times per week that
9 last 2 hours, he can sit and stand for a maximum of 30 minutes each, and he cannot lift more than
10 20 pounds, but in practice lifts no more than 10-15 pounds. He also alleges a right finger injury,
11 and states that it is difficult for him to hold objects such as a pencil, though he admits that he
12 worked as an electrician following the injury for several years. He also alleges having knee pain,
13 but admits that it did not keep him from working and he did not require special accommodations
14 at work for his knee condition. He alleges suffering from depression, but admits that he gets no
15 counseling and takes no medication for it. *Id.*

16 Plaintiff argues that the ALJ failed to identify specifically which of Plaintiff's statements
17 she found not credible and failed to link that testimony to particular parts of the record
18 supporting her non credibility determination. *See Brown-Hunter v. Colvin*, 806 F.3d 487, 493-
19 494 (9th Cir. 2015) (citing *Burrell v. Colvin*, 775 F.3d 1133, 1139 (9th Cir. 2014) (holding that
20 the ALJ committed legal error because he never connected the medical record of Claimant's
21 testimony" nor made "a specific finding linking a lack of medical records to Claimant's
22 testimony about the intensity of her ... pain" (emphasis added)).

1 The ALJ first found that Plaintiff's complaints of double vision were inconsistent with
2 objective testing and medical opinions about his condition. Tr. 21-22. Although the ALJ should
3 not discount subjective allegations merely because they are not fully substantiated by objective
4 findings, when allegations specifically conflict with a medical opinion about what the claimant
5 can do, that alone is a clear and convincing reason to discount the allegations. *Carmickle v.*
6 *Comm'r, Soc. Sec. Admin.*, 533 F.3d 1155, 1161 (9th Cir. 2008). As previously noted, four
7 examining physicians found that Plaintiff's allegations conflicted with the objective testing
8 (showing that he had normal vision), so they concluded that he could work and/or had no visual
9 limitations. Tr. 21-22. They also found a mismatch between his subjective complaints and the
10 objective findings, leading them to conclude that his eye symptoms were nonorganic and
11 functional. Tr. 664, 673, 687, 837. Based on this evidence, it was not irrational for the ALJ to
12 discount Plaintiff's reports of his symptoms.

13 In addition, the ALJ identified specific inconsistencies between Plaintiff's reports of his
14 symptoms and the medical evidence, *i.e.*, Plaintiff did not have significant residual neurological
15 deficits after the work injury, there was no evidence of traumatic brain injury, and by the time he
16 went to the doctor more than a week after his work accident, his visual problems had completely
17 resolved. Tr. 22 (citing Tr. 630-32, 434).

18 The ALJ also found that Plaintiff's subjective symptoms improved with treatment. Tr. 22.
19 This is a convincing reason to discount an allegation of disabling symptoms. *Tommasetti v.*
20 *Astrue*, 533 F.3d 1035, 1040 (9th Cir. 2008). The record reflects that shutter glasses have helped
21 improve Plaintiff's visual field (Tr. 22, 639), and Jacob Dufour, O.D., noted that Plaintiff had
22 improvement with prism glasses (Tr. 22, 936). Physical therapy helped Plaintiff's shoulder
23 symptoms, restrictions seemed to be primarily muscular, and diagnostic testing showed no

1 pathology (Tr. 23, 446, 532, 571), and by 2016, Plaintiff was no longer in physical therapy (Tr.
2 1096). As to Plaintiff's alleged organic brain syndrome, medical providers found no persisting
3 brain damage or evidence of severe neuropsychological deficits, although one provider noted
4 that, based on Plaintiff's self-reported symptoms of diplopia and migraines, his overall cognitive
5 efficiency and emotion regulation appeared diminished. Tr. 22. The ALJ noted that the RFC
6 limiting Plaintiff to unskilled work with a GED reasoning level of 2 or less took these conditions
7 into account. Tr. 22.

8 In sum, the ALJ noted where Plaintiff's allegations conflicted with the medical evidence,
9 which indicated that there is no organic basis for his reports. The ALJ also noted Plaintiff's
10 symptoms improved with conservative treatment. Even if one of the reasons is invalid, the ALJ's
11 finding should still be affirmed, as the ALJ gave several reasons and the overall finding is
12 supported by substantial evidence. *See Batson v. Comm'r of the Soc. Sec. Admin.*, 359 F.3d 1190,
13 1197 (9th Cir. 2004); *Carmickle v. Comm'r, Soc. Sec. Admin.*, 533 F.3d 1155, 1162-63 (9th Cir.
14 2008) (upholding an ALJ's credibility determination although two of the ALJ's reasons were
15 invalid).

16 CONCLUSION

17 For the foregoing reasons, the Commissioner's decision is **AFFIRMED** and this case is
18 **DISMISSED** with prejudice.

19 DATED this 18th day of June, 2019.

20
21 

22 BRIAN A. TSUCHIDA
23 Chief United States Magistrate Judge